



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00352/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-
on-Trent
On 26th January 2015**

**Determination Promulgated
On 27th January 2015**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR V M H
(Anonymity Direction made)**

Respondent

Representation:

For the Appellant: Mr G Harrison (Senior Home Office Presenting Officer)

For the Respondent: Mr C Talacchi (Direct Access Counsel)

DETERMINATION AND REASONS

1. Although the First-tier Tribunal made no anonymity direction, as there are children involved who may be adversely affected by publicity I make one.
2. This is the Secretary of State's appeal to the Upper Tribunal, with permission, against the determination of First-tier Tribunal Judge Bell who in a determination promulgated on 24th July 2014 allowed the Appellant's

appeal against the refusal by the Secretary of State to revoke a deportation order made in August 2011. For the sake of continuity I shall refer to Mr V M H as the Appellant and the Secretary of State as the Respondent in this determination.

3. The background to this case is that the Appellant is a Vietnamese national who came to the UK, illegally, in 2006. He has a less than impressive immigration history and also after his arrest for growing cannabis in May 2010 he absconded and breached his bail conditions. He was arrested for motoring offences in 2011 and so faced the drugs charges. He was convicted in May 2011 and sentenced to 18 months imprisonment. The sentencing Judge also recommended deportation.
4. On the date of his conviction his Vietnamese partner was pregnant and gave birth to their son on 11th August 2011. His partner already had a daughter born in 2009 to a British man with whom she was then in a relationship. That daughter is British and she has regular contact with her father and grandmother. The Appellant's partner and son have discretionary leave to remain until 2016, it is believed because of her parental role in relation to her British daughter.
5. The Secretary of State made a deportation order on 31st August 2011. The Appellant did not appeal. However, he made representations on 24th February 2012 and 26th March 2013. They led to a decision to refuse to revoke the deportation order taken on 24th October 2013.
6. The grounds seeking permission to appeal argue that the Judge misdirected herself in finding that there were exceptional circumstances given the nature and gravity of the offence, the fact that the partner and son were not settled and that the partner's daughter could be cared for by her British father.
7. The Judge took account of the Appellant's poor immigration history, his absconding and the gravity of his offending at paragraph 37 of the determination.
8. The Judge noted that the partner's daughter had contact with her British father but that she lived with her mother and the Appellant who had a significant role in her life. Clearly the desirability of that child living with her mother was accepted by the Secretary of State when she granted her discretionary leave to remain. The Judge noted that if the Appellant were deported the two children and partner would be unable to go to Vietnam with him and that would be against the children's best interests.
9. The Judge was clearly aware of the provisions of paragraphs 397, 398 and 399 of the Immigration Rules and the case of MF [2013] EWCA Civ 1192 because she refers to them.

10. The Judge took note of the fact that the Appellant has been of good character since his release in 2012.
11. Reading the determination as a whole it is clear that the Judge applied the law correctly. She understood that paragraph 397 states that absent one of the exceptions in paragraph 399 it will only be in exceptional circumstances that the public interest in deportation will be outweighed. The Judge found there to be exceptional circumstances, gave her reasons for so finding and allowed the appeal. While that conclusion may not have been one that all Judges would have reached, it was nevertheless open to her having heard the evidence.
12. The grounds amount to no more than a disagreement with the Judge's conclusion that there were exceptional circumstances and a restatement of the Secretary of State's case. They do not reveal an error of law. Mr Harrison did not seek to persuade me otherwise.
13. The Secretary of State's appeal to the Upper Tribunal is dismissed.
14. As I indicated at the beginning of this determination, as there are young children involved in this case I make an anonymity direction to protect their interests.

Direction regarding anonymity - rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant, his partner and her two children are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.

Signed

Dated 26th January 2015

Upper Tribunal Judge Martin